



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0001

OFFICE OF ADMINISTRATION

September 20, 2019

Ms. Emma Best
MuckRock News
DEPT MR 79459
411A Highland Avenue
Somerville, MA 02144-2516

RE: Freedom of Information Act Request
FOIA Control No: 19-FI-HQ-01855

Dear Ms. Best:

This letter is in response to your Freedom of Information Act (FOIA) request dated and received on August 26, 2019. You requested documents in which the Department of Housing and Urban Development mentions or describes any use of "still interested" letters in the processing and/or closure of FOIA requests, including but not limited to:

1. The original proposal for their use;
2. Materials authorizing the use of any of the letters;
3. Controlling policies or procedures;
4. Any reports or statistics tracking their use, responses received and/or impact on any FOIA backlog;
5. Communications with the Office of Government Information Services (OGIS) regarding still interested letters;
6. Communications between the FOIA offices and general counsel's/legal services office discussing or mentioning such letters;
7. Materials describing or discussing the number of days given to requesters to respond; and
8. Materials describing HUD's policy on reopening requests when a requester responds after the period of time specified in the letter

A search of the Department's records did not produce any responsive documents. In response to items 1, 2, and 3, there is no original proposal, HUD-produced materials authorizing their use, or HUD-produced controlling policies and procedures. In response to item 4, the Department has not produced reports or statistics related to still interested letters. In response to items 5 and 6, HUD has not communicated with any of the offices that you named with regard to such letters. In response to items 7 and 8, HUD has not created materials that describe their use.

However, I am enclosing copies of 2015 guidance from the Department of Justice's Office of Information Policy (OIP) on using such letters. In addition to OIP's announcement, enclosed is its "Implementation Checklist for OIP Guidance on 'Still-Interested' Inquiries, as updated July 2, 2015, and its "Limitations on Use of 'Still-Interested' Inquiries, as updated July 20, 2015.

I am the official responsible for this determination. You may appeal this determination within 90 days from the date of this letter. The envelope should be plainly marked to indicate that it contains a FOIA appeal and be addressed to:

U.S. Department of Housing and Urban Development
Attention: FOIA Appeals
Office of Ethics and Appeals Law Division
Office of General Counsel
451 Seventh Street, SW, Suite 2130
Washington, DC 20410

Telephone: (202) 708-3815

You may also submit your appeal online at:

https://www.hud.gov/program_offices/administration/foia/foiaappeals.

In addition, you may contact the OGIS to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001

Telephone: 202-741-5770; toll free at 1-877-684-6448

FAX: 202-741-5769

Email: ogis@nara.gov

For your information, your FOIA request, including your identity and any information made available, is releasable to the public under subsequent FOIA requests. In responding to these requests, the Department does not release personal information, such as home address, telephone number, or Social Security number, all of which are protected from disclosure under FOIA Exemption 6.

If you have any questions regarding this request, please contact Howard Rosenberg at (202) 402-5507. Thank you for your interest in the Department's policies and programs.

Sincerely,



Deborah R. Snowden
Deputy Chief FOIA Officer
FOIA Branch
Office of the Executive Secretariat

Enclosures

OIP RELEASES NEW GUIDANCE FOR AGENCY STILL-INTERESTED INQUIRIES

July 2, 2015

President Obama and Attorney General Holder emphasized in their FOIA Memoranda the importance of agencies working with FOIA requesters "in a spirit of cooperation." A key element of that cooperation is establishing and maintaining good communication with requesters. In 2010, before the first anniversary of the issuance of Attorney General Holder's FOIA Guidelines, the Office of Information Policy (OIP) issued guidance entitled The Importance of Good Communication with FOIA Requesters. That guidance addressed several ways in which agencies could improve their communication practices.

One of the topics addressed in OIP's 2010 guidance was the use of what is known as a "still-interested" inquiry, i.e., when an agency asks a requester whether he or she remains interested in the continued processing of their request. OIP's 2010 guidance advised agencies to be "mindful of the manner in which such inquiries are made," and to afford requesters a reasonable amount of time to indicate their continued interest.

Today, OIP has released new guidance designed to further improve the way "still-interested" inquiries are utilized by agencies. As noted in this new guidance:

"While use of 'still-interested' inquiries is an understandable way to help ensure that agency resources are appropriately spent processing requests for records where the requester remains interested in receiving the documents, it is equally important that requesters are not in any way disadvantaged by their use."

The new guidance outlines a series of procedures that agencies should use when inquiring whether a requester remains interested in the continued processing of his or her request.

These include:

- **Reasonable Grounds to Make "Still-Interested" Inquiry in the First Instance** – any "still-interested" inquiry should be limited to those situations where the agency has a reasonable basis to conclude that the requester's interest in the records may have changed;
- **Limiting the Number of Times "Still-Interested" Inquiries are Made** – absent good cause, agencies should not inquire more than once whether a requester is still interested in the request;
- **Using Requester's Preferred Method of Communicating** – email or telephone are often the most efficient ways to communicate with requesters and should be used as the default;
- **Providing Requesters with a Reasonable Amount of Time and Method to Respond to "Still-Interested" Inquiries** – the time period to allow requesters to respond to "still-interested" inquiries should be no shorter than thirty (30) working days and a simple response over the telephone, a reply to an email, or the checking of a box on a self-addressed form are all examples of easy methods that agencies can make available to requesters so that they can most readily respond to the inquiry; and
- **Ensuring Requesters are Not Disadvantaged** – in the event a requester responds to a "still-interested" inquiry within a reasonable time after the deadline has passed, agencies should simply reopen the request and place it back into the agency's queue in the same position it would have been had the "still-interested" inquiry not been sent.

Agencies should review their procedures on the use of “still-interested” inquiries to ensure they are in conformity with this [new guidance](#). OIP has prepared an [implementation checklist](#) to assist agencies in doing so.

The [full text of the guidance](#) and its accompanying [checklist](#), along with all other guidance issued by OIP, is available on our [guidance page](#).

Topic(s):

FOIA

Component(s):[Office of Information Policy](#)

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OIP GUIDANCE

Implementation Checklist for OIP Guidance on “Still-Interested” Inquiries

1. Ensure there are reasonable grounds to make a “still-interested” inquiry in first instance.
2. Absent good cause, do not make multiple “still-interested” inquiries.
3. Use requester’s preferred method of communication and in the absence of a preference, communicate by telephone or email as the default.
4. Memorialize any decision by a requester to withdraw a request that is conveyed by telephone by sending the requester a brief email or letter noting the withdrawal.
5. Provide requesters no less than thirty (30) working days to respond to the “still-interested” inquiry and ensure that there is a simple way to do so.
6. Advise the requester that if they elect not to respond to the inquiry, the request will be administratively closed at the conclusion of the designated time period (which must be at least 30 working days).
7. Prior to administratively closing a request based upon the lack of a response by the requester, make good faith efforts to reach out to the requester using multiple methods of communication.
8. In the event a requester responds to the “still- interested” inquiry within a reasonable time after the deadline has passed, reopen the request and place it back into the processing queue where it would have been.

Updated July 2, 2015

Was this page helpful?

Yes No

OIP GUIDANCE

Limitations on Use of “Still-Interested” Inquiries

In his FOIA Memorandum, President Obama emphasized the importance of agencies working with FOIA requesters “in a spirit of cooperation.” Further, Attorney General Holder stated that ensuring transparency “requires an effective system for responding to FOIA requests.” Embracing the President’s and Attorney General Holder’s directives, OIP’s 2010 guidance entitled The Importance of Good Communication with FOIA Requesters and 2013 guidance entitled The Importance of Good Communication with FOIA Requesters 2.0 provided advice to agencies on a range of good communication practices.

Among the topics addressed by OIP’s 2010 guidance on good communication was a practice used by some agencies to determine whether a requester remains interested in the continued processing of his or her request. To learn of that continued interest, agencies have traditionally sent letters asking requesters whether they remain interested in the processing of their requests – a practice that has come to be called “sending a ‘still-interested’ letter.” OIP’s 2010 guidance emphasized the importance of agencies being “mindful of the manner in which such inquiries are made” and cautioned agencies not to make such inquiries more than once, absent good cause. OIP further advised agencies to afford requesters a reasonable amount of time to indicate their continued interest and to ensure that there was a simple way to do so. Building off of that 2010 guidance, this guidance sets forth additional limitations on the use of “still-interested” inquiries to further ensure that such communications are done in a spirit of cooperation and that requesters are not in any way disadvantaged by the practice.

Appropriate Use of “Still-Interested” Inquiries

For the vast majority of requests, agencies process the records to completion. Agencies may engage with the requester during that time to discuss the scope and status of the request, but the request is ultimately processed and a final response is sent. There are occasions, though, where the passage of time or a change in circumstance gives rise to a question of whether a FOIA requester is still interested in obtaining the records that are responsive to a request. When this occurs, many agencies contact the requester to inquire whether he or she is “still-interested” in having the request processed. As stated in OIP’s 2010 guidance, “[w]hen done judiciously, this is entirely appropriate because agency resources should not be expended on processing a request when the requester is no longer interested in the records.” In that event, rather than expending limited time and resources on a request that is no longer of interest, agency FOIA professionals can move on to processing the next requests in their processing queues, ensuring that those requests are not delayed unnecessarily.

While the judicious use of “still-interested” inquiries can be appropriate, it is critical that agencies employ safeguards to limit the number and impact of such communications.

Reasonable Grounds to Make “Still-interested” Inquiry in the First Instance

As a matter of sound FOIA administration, prior to sending a “still-interested” inquiry agencies should, at a minimum, have already provided the requester with an acknowledgment of his or her request and given the requester a point of contact and contact information for any questions. The “still-interested” inquiry should never be the first communication a requester receives from the agency.

Agencies should also ensure that they limit their use of “still-interested” inquiries to those situations where they have a reasonable basis to conclude that the requester’s interest in the records may have changed. While the

passage of time is often an indicator, it is not dispositive. For example, an agency may have been in regular communication with a requester and as a result of those exchanges it would have a clear indication that the requester remains interested in the records despite the age of a request. A "still-interested" inquiry would not be appropriate in such a case.

Conversely, when making a significant interim release to a requester the agency may believe that the release will satisfy the requester's information needs and so inquiring about proceeding further would be appropriate. Similarly, the agency may have proactively disclosed records on a topic that is also the subject of a request. It would be appropriate for an agency to point to the newly posted material and inquire whether the availability of that material has met the requester's information needs. The key point for agencies is that prior to sending a "still-interested" inquiry, they must have reasonable grounds to do so. If the agency does not have reason to believe that the requester's interest in the request has waned, it should not send a "still-interested" inquiry.

Limiting Number of Times "Still-interested" Inquiries Are Made

As OIP emphasized in its 2010 guidance, absent good cause, an agency should not inquire more than once whether a requester is "still-interested" in the request.

Using Requester's Preferred Method of Communicating

When an agency identifies the need to contact a requester for the purposes of determining whether he or she is "still-interested" in the request, it should do so using the requester's preferred method of communication. For requesters who prefer to be contacted by phone or by email, agencies should first use those methods of communication to inquire about the requester's continued interest in the request, prior to sending a letter. In the absence of a stated preference, agencies should communicate electronically as their default.

Communicating by email and telephone are highly efficient for both agencies and requesters alike as the requester can readily express whether he or she remains interested in the request and the agency, in turn, will have an immediate answer to its inquiry. Using the telephone can be particularly appropriate for requests made by organizations as it could be the easiest way to reach an appropriate contact at the organization. On those occasions where the requester advises the agency over the telephone that he or she is no longer interested in the processing of the request, agencies should memorialize that conversation and send the requester a brief email or letter noting the withdrawal.

As OIP emphasized in its 2010 guidance, it is critical that agencies remain cognizant of how such communications can be perceived by requesters and to work in a "spirit of cooperation" when making "still-interested" inquiries. For example, it can be helpful to explain why the agency is making the inquiry.

Providing Requesters with a Reasonable Amount of Time and Method to Respond to "Still-Interested" Inquiries

It is very important that all agencies afford requesters a reasonable amount of time to provide a response to a "still-interested" inquiry. While OIP advised agencies in its 2010 guidance to provide a reasonable amount of time for requesters to respond, OIP believes it is important to establish a floor, or minimum number of days that all agencies provide requesters. Going forward, the time period to allow requesters to respond to "still-interested" inquiries *should be no shorter than thirty (30) working days*.

Agencies should also ensure that there is a simple way for requesters to notify the agency if they are still interested in the continued processing of the request. There should be no rigid requirements imposed on the requester as to how they communicate their interest in having the request continued to be processed. For example, a simple response over the telephone, a reply to an email, or checking off a box on a self-addressed form are all examples of easy methods that agencies can make available to requesters so that they can most readily respond to the inquiry.

Lastly, it is important for agencies to factor in how to address the handling of a request when there is no response from a requester to a "still-interested" inquiry. A non-response by the requester can itself demonstrate that there is no longer an interest in the records. However, prior to administratively closing a request, it is important to ensure that agencies make good faith efforts to reach out to the requester using multiple methods of communication. Whenever feasible, the agency should make its "still-interested" inquiry using more than one method of communication. When attempts to reach a requester by phone are unsuccessful, the agency should send a written communication, either email or letter, and include in that outgoing communication a notification to the requester of what will happen to the request if the requester does not respond to the "still-interested" inquiry. For example, some agencies advise the requester that if they are no longer interested in the processing of their request that they need do nothing in response to the "still-interested" inquiry and that, after passage of the designated time period to respond (which, as mentioned above should be no less than 30 working days), the agency will simply administratively close the request. Including such a notification also alerts those requesters who do remain interested in the importance of responding affirmatively to the inquiry.

Ensuring Requesters are Not Disadvantaged

While use of "still-interested" inquiries is an understandable way to help ensure that agency resources are appropriately spent processing requests for records where the requester remains interested in receiving the documents, it is equally important that requesters are not in any way disadvantaged by their use. There are two steps agencies can take to ensure that does not occur.

Reopening Administratively Closed Requests & Placing them Back in the Queue Where They Would Have Been

After receipt of a "still-interested" inquiry, many requesters promptly respond to the agency, sometimes conveying that they are still interested in the continued processing of their request, but other times indicating that they are, in fact, no longer interested. There are occasions when the requester does not respond and, as mentioned above, it is important for agencies to convey to requesters what will happen to the request when there is no response to a "still-interested" inquiry. If the agency has advised the requester that a lack of a response within the designated time period to the "still-interested" inquiry will be taken as an indication that the requester is, in fact, no longer interested in continued processing, the agency may administratively close the request.

There may be occasions, however, where a requester takes longer than the allotted days to indicate that he or she is still-interested. This can occur for example, when the employee of an organization has changed jobs, or when a requester has been on extended travel. In such circumstances the requester might miss even the thirty working day window now being afforded to indicate his or her continued interest. In that event, when a requester responds to the agency within a reasonable time after the deadline, in order to be sure that the requester has not been disadvantaged by the administrative closure, the agency should simply re-open the request. Importantly, agencies should also place the request back into the processing queue in the place where it would have been had the "still-interested" inquiry not been sent. By taking these two steps agencies will ensure that requesters are not in any way disadvantaged by the sending of a "still-interested" inquiry.

Example: An agency receives a perfected request on February 1. The agency acknowledges the request and later makes two interim releases. Given those releases the agency believes that the requester may no longer be interested in the continued processing of the remaining records. The agency calls the requester and follows up with an email asking the requester if he is still-interested in the remaining records being processed. The requester is provided thirty working days to respond to the email before the request is administratively closed. Two months later, after the agency has administratively closed the request, the requester contacts the agency and advises that he has been out of the country, but that he is still interested in the processing of the request.

The agency should reopen the request and place it back in the processing queue where it would have been had it not been administratively closed.

Conclusion

Given the importance of ensuring that limited agency resources are used most efficiently, it can be appropriate for agencies to inquire whether a requester is still interested in the continued processing of his or her FOIA request whenever there is reason to believe that the requester's interest may have changed. In doing so, agencies should use the procedures outlined above to ensure that requesters are given sufficient time to respond, which should be at least thirty working days, and can do so in an easy way. Importantly, in the event a requester responds within a reasonable time after the allotted time period, he or she should in no way be disadvantaged. Instead, the request should be reopened and put back in its place in the queue. By taking these steps agencies will be working with requesters in a true spirit of cooperation, while also ensuring they are operating efficiently, which benefits everyone involved in the FOIA process.

Implementation Checklist for OIP Guidance on "Still-Interested" Inquiries

Updated July 20, 2015

Was this page helpful?

Yes No